

VIII. Financial Reimbursement Procedures & Cost Recovery Packet

Montana Law requires the SERC to “promulgate rules and procedures limited to cost recovery procedures...” (10-3-1204 (2) MCA).

Montana Law allows: “State hazardous material incident response team members (SHMIRT) to submit claims to the commission for reimbursement of documented costs incurred as a result of the team’s response to an incident...” The law also allows a party who is not a member of the organized regional response team to submit a claim if the commission or the state hazardous materials team requested the party to respond (10-3-1214 (1) MCA).

Montana Law establishes time limits for claim submission of no longer than 60 days after the termination of the response to the incident (10-3-1214 (4) MCA).

Montana Law further states:

“Reimbursement may be made only after the commission finds that the actions by the applicant were taken in response to an incident and only if adequate funds are available (10-3-1214 (4) MCA)”.

The commission shall review all claims for reimbursement and make recommendations to the governor as to payment or nonpayment of the claims within 90 days of receipt. The governor may authorize the issuance of warrants to be paid from the environmental contingency account provided for in 75-1-1101 to the limit of the fund balance for the purpose of reimbursing reasonable and documented costs associated with emergency actions taken (10-3-1215(1)(a) MCA). The costs of routine firefighting procedures are not reimbursable costs under this part. (10-3-1215 (1)(b) MCA). Reimbursement must be in accordance with the schedule defined in the plan (10-3-1215 (1)(c) MCA). The decision of the governor is final and non-appealable (10-3-1215 (1)(d) MCA).

Local responders and their mutual aid response are not eligible for reimbursement from the state fund. They may be able to collect for eligible expenses under federal and state statutes.

Document all costs.

- Save original receipts.
- Record Mileage.
- Equipment time usage.
- Detail supplies used.
- Record personnel response times.
- Lodging and per diem rates.

Within 60 days of your release from the incident submit to the SERC a detailed invoice and documentation of costs. Charges must be according to this plan’s Schedule of Costs established annually by the SERC State Hazardous Materials Response Team subcommittee.

Invoices can be in any format but must include:

- The date and time of response;
- The names, addresses, and Social Security numbers, completed “I 9” (*INS employee eligibility verification*) and “W 4” (*IRS Withholding form*) forms of all responders if they are to be paid under the state plan;
- The name of the jurisdiction where the response took place; and
- Documentation and receipts of costs, and the name, address of the party requesting reimbursement.

Additionally the applicant must submit a narrative of their activities during the response.

Schedule of Costs

If the SHMIRT is deployed according to this plan, all associated costs of SHMIRT response, including backfilling of personnel to cover for deployed SHMIRT members will be eligible for reimbursement according to the SERC approved schedule of costs. Equipment costs will be at the same rate as used by Northern Rockies Coordinating Group. Personnel costs will be uniform according to a personnel rate annually approved by the SERC and on file with the Division.

Cost Recovery Forms

Provisions for cost recovery for HAZMAT incidents are provided in 75-10-717, MCA.

The SERC has developed a Cost Recovery Packet to assist local agencies in recovering costs from the shipper/owner for expenses incurred during a HazMat emergency.

The following is a guide for completing a Cost Recovery Packet and other related documents.

1. Attach a copy of the NFIRS report and all related documents.
2. Billing Information Worksheets:
 - a. Complete all spiller data.
 - b. Incident report number and names of agencies - law enforcement, fire department, other.
 - c. Exact location of incident.
 - d. Date and time of incident.
 - e. Name of material(s) released.
 - f. Attachments: Resource Order Number(s), Montana Fire Incident Report, invoices for costs of rental equipment, and any other reports that may apply to cost recovery.
 - g. Description of incident activities.
3. Apparatus/Vehicle Cost Worksheet - Fill in the appropriate information.
4. Personnel Cost Worksheet - Fill in the appropriate information.
5. Equipment Cost Worksheet - Fill in the appropriate information.
6. Miscellaneous Cost Worksheet - Fill in the appropriate information.
7. Cost Summary Sheet (transfer sub-totals from cost worksheets to this page).
8. Within fifteen (15) days, forward copy of completed packet to the SERC.

Cost Recovery for State Response Personnel

10-3-1203(3) Duration of Response

“Duration of response” means a period of time beginning when an emergency responder is requested by the appropriate authority to respond to an incident and ending when the responder is released from the incident by the incident commander and returned to the emergency responder's place of residence by the most direct route and includes the time required to replace and return all materials used for the incident to the same or similar condition and state of readiness as before the response.

Right to reimbursement (10-3-1214 MCA).

- (1) SHMIRT members may submit claims to the commission for reimbursement of documented costs incurred as a result of the team’s response to an incident. Reimbursement for the costs may not exceed the duration of response
- (2) A party who is not a part of the SHMIRT and is not liable under federal or state law may submit a claim to the commission for costs if the claim is associated with a request by the SHMIRT or the commission.
- (3) Claims for reimbursement must be submitted to the commission within 60 days after termination of the response to the incident for the state's determination of payment, if any.
- (4) Reimbursement may be made only after the commission finds that the actions by the applicant were taken in response to an incident and only if adequate funds are available.

Deficiency Warrants for Reimbursement of Response Costs (10-3-1215 MCA).

- (1)(a) The SERC shall review all claims for reimbursement and make recommendations to the governor as to payment or nonpayment of the claims within 90 days of receipt. The governor may authorize the issuance of warrants to be paid from the environmental contingency account provided for in Sec. 75-1-1101 MCA to the limit of the fund balance for the purpose of reimbursing reasonable and documented costs associated with emergency actions taken.
- (1)(b) The costs of non-incident routine firefighting procedures are not reimbursable costs.
- (2) Reimbursement must be in accordance with the schedule defined in the plan.
- (3) The decision of the governor is final and non-appealable.
- (4) This section may not be construed to change or impair any right of recovery or subrogation arising under any other provision of law.

Cost recovery and civil remedies (10-3-1216 MCA).

- (1) Cost recovery including any requested state assistance expenses is the duty of the local jurisdiction having authority where an incident occurred.
- (2) The commission shall ensure the recovery of all state response related expenditures according to the plan.
- (3) The Responsible Party for an incident is liable for attorney fees and costs of any requested state agency response as well as expenses the commission incurred in recovering costs associated with responding to an incident.
- (4) The remedy for the recovery of emergency response costs identified is in addition to any other remedy for recovery of the costs provided by applicable federal or state law.

- (5) Any person who receives compensation for the emergency response costs pursuant to any other federal or state law is precluded from recovering compensation for those costs pursuant to this chapter.
- (6) Except for the commission and the state hazardous material incident response team, the plan does not otherwise affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from the release or threatened release of any hazardous material or for remedial action or the costs of remedial action for a release or threatened release.
- (7) Any person who is not a liable party under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended, or the Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7, and who renders assistance in response to an emergency situation associated with an incident may file a civil action against the responsible party for recoverable costs that have not been reimbursed by the state.
- (8) Recoveries by the state for reimbursed costs must be deposited in the environmental contingency account or the state disaster fund to offset amounts paid as reimbursement.
- (9)(a) In the event of orphaned hazardous material or the inability of the state to recover the full cost associated with an incident and the cost of collection described in this section, the state shall recover from the city or county having authority where the incident occurred an amount equal to 25% of the total cost.
- (9)(b) When the hazardous material incident occurs in or involves multiple jurisdictions, the collectible amount must be divided as agreed to by the governing bodies equally divided among of the jurisdictions.

Liability of persons and response personnel rendering assistance (10-3-1217 MCA).

The commission and the SHMIRTs are not liable for injuries, costs, damages, expenses, or other liabilities resulting from the release or threatened release of a hazardous material. The immunity includes but is not limited to indemnification, contribution, or third-party claims for wrongful death, personal injury, illness, loss or damages to property, or economic loss. A person becomes a member of the SHMIRT when the person is contacted for response regardless of the person's location.